

# American Federation of Labor and Congress of Industrial Organizations

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November 12, 1998

Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 4808

Dear Sir or Madam:

I am responding on behalf of the Connecticut AFL-CIO to the complaint filed by John B. Larson against Miles Rapoport and Rapoport for the First on September 10, 1998. The Connecticut AFL-CIO urges the General Counsel to recommend that the Commission dismiss the complaint with respect to the Connecticut AFL-CIO because the complaint both fails to satisfy the Commission's procedural requirements and lacks factual and legal merit.

The Commission lacks jurisdiction to initiate an enforcement proceeding concerning the Connecticut AFL-CIO. Neither Mr. Larson nor any other person has filed a complaint with the Commission against the Connecticut AFL-CIO. Although the Commission has advised the Connecticut AFL-CIO that the complaint "indicates" that the Connecticut AFL-CIO "may have violated the Federal Election Campaign Act," the complaint does not comply with 11 C.F.R. § 111.4(d)(1), which requires a complaint to "clearly identify *as a respondent* each person or entity who is alleged to have committed a violation" (emphasis added). The complaint nowhere so identifies the Connecticut AFL-CIO. Nor have the Commission's procedures for internally generated matters and referrals been followed with respect to the Connecticut AFL-CIO. See 2 U.S.C. § 437g(a)(2); 11 C.F.R. § 111.8. Accordingly, the Commission should take no further action as to the Connecticut AFL-CIO for this reason alone.

Regardless of this procedural defect, there is no factual or legal basis whatsoever to the allegations of the complaint about the activities of the Connecticut AFL-CIO. Neither Mr. Larson's complaint nor his affidavit sets forth any specific information, such as names, dates

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and other necessary details, that suggest a violation by the Connecticut AFL-CIO of the Federal Election Campaign Act. Rather, the submissions consist solely of speculative allegations and copies of two leaflets that are lawful on their face. And, as the enclosed declaration by Thomas Carusello, the Director of Connecticut COPE, the political action committee of the Connecticut AFL-CIO, sets forth, these allegations are belied by the actual facts concerning the Connecticut AFL-CIO's activities in connection with the Democratic primary election on September 15 for the First Congressional District in Connecticut.

I address in turn below each of the five discernible subjects of the complaint in light of Mr. Carusello's declaration and the applicable law.

The complaint first alleges that Mr. Rapoport used the leaflet identified as "Exhibit A" as part of a "false and illegal campaign to convey" an "opposite impression" from the truth about particular matters, including to "blatantly and falsely accus[e] Mr. Larson of opposing prescription drug programs for seniors." We decline to debate the accuracy of the leaflet because the FECA does not regulate the truth or fairness of political expression of either candidates or third parties, and the Commission therefore has no jurisdiction to investigate or adjudicate that issue.

Second, the complaint alleges that this leaflet was unlawfully paid for and was coordinated with Mr. Rapoport. In fact, the leaflet was prepared by the national AFL-CIO on the basis of information provided by the Connecticut AFL-CIO, and it was distributed by the Connecticut AFL-CIO by mail and work site leafleting only to a portion of its restricted class, namely, labor union members residing within the First Congressional District. Declaration of Thomas Carusello ("Carusello Decl.") ¶ 5. These activities are squarely protected by the Act. See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. § 114.3. Moreover, neither the content nor the distribution of this leaflet was coordinated between the Connecticut AFL-CIO and Mr. Rapoport's campaign, Carusello Decl. ¶ 5; but even had they been coordinated, such coordination would have been lawful because the leaflet's distribution was confined to the Connecticut AFL-CIO's restricted class. See 11 C.F.R. § 114.3(a)(1).

Third, the complaint makes the same payment and coordination allegations with respect to the leaflet identified by Mr. Larson as "Exhibit B." But this leaflet too was prepared by the national AFL-CIO, provided to the Connecticut AFL-CIO, and distributed by mail solely to

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union members within the First District. Carusello Decl. ¶ 6. There was no distribution to nonmembers, and therefore no violation of the Act; and, although there was no coordination of it with Mr. Rapoport's campaign, such coordination would have been lawful had it occurred.

Fourth, the complaint claims that "officers and members" of the "organizations paying for the advertising" were regularly working at Mr. Rapoport's headquarters, attending campaign events, and contributing money and time to the Rapoport campaign. Insofar as these allegations refer to actions by the Connecticut AFL-CIO or the national AFL-CIO, they are false; insofar as they refer to actions by individuals in their personal capacity, they state no FECA violation.

No officer or member of either the Connecticut AFL-CIO or the national AFL-CIO, as part of its Labor '98 operation or otherwise, worked at any time at Mr. Rapoport's headquarters or under his campaign's direction. Carusello Decl. ¶ 7. If any personal contributions were made to Mr. Rapoport's political committee by union officers or members (lawful activity so long as it adhered to the limitations set forth in 2 U.S.C. § 441a(a)(1)(A)), the Connecticut AFL-CIO had no involvement in them. Carusello Decl. ¶ 8. It is also lawful for anyone to volunteer for a political campaign, of course, and any union members who volunteered for the Rapoport campaign did not do so in the employ, or under the direction or control, of the Connecticut AFL-CIO or the national AFL-CIO. Carusello Decl. ¶ 7. Further, the federal political action committee affiliated with the national AFL-CIO, COPE, lawfully made a \$5,000 contribution to Mr. Rapoport's campaign during the primary campaign; but neither the Connecticut AFL-CIO nor its political action committee, Connecticut COPE, made any contribution at any time to the campaign. Carusello Decl. ¶ 9.

Finally, the complaint alleges that at Mr. Rapoport's request unnamed "organizations" "unwittingly" and unlawfully contributed to his campaign "by using telephones and facilities owned by them" in support of it. In fact, the Connecticut AFL-CIO used its resources to support the Rapoport campaign only for communications with its restricted class, including the mailings and leafletings described above as well as telephone banks. Carusello Dec. ¶ 10. For the same reasons discussed above, these were completely lawful activities.

Mr. Larson filed and widely publicized his complaint against Mr. Rapoport and Rapoport for the First on September 10, just five days before the primary election. Without suggesting that Mr. Larson then disbelieved his assertions, it is apparent that a principal purpose of the complaint was to seize partisan advantage at a key moment in this campaign by attributing

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improper conduct to his opponent. I understand that Mr. Larson has since informed the Commission of his desire to withdraw his complaint. Although the Commission is not constrained to forgo or terminate an enforcement proceeding because a complaint entails political motivations or is withdrawn, those circumstances provide additional reason, in light of the complaint's procedural and substantive problems discussed above, for the Commission to decline to proceed further.

For all these reasons, we respectfully request that the General Counsel recommend that the Commission find that there is no reason to believe that a violation has been committed, or that the Commission otherwise determine to take no action, and that it dismiss the complaint.

Thank you for your consideration of this submission.

Yours truly,



Laurence E. Gold  
Associate General Counsel

LEG:hmp

Enclosure

cc: John W. Olsen, President, Connecticut AFL-CIO

Thomas Carusello, COPE Director, Connecticut AFL-CIO

FEDERAL ELECTION COMMISSION

In the matter of

MILES RAPOPORT and

RAPOPORT FOR THE FIRST

MUR 4808

Nov 17 3 35 PM '98

DECLARATION OF THOMAS CARUSELLO

1. I am the COPE Director of the Connecticut AFL-CIO. I have held this position since 1992. As COPE Director, I am responsible for the political program of the Connecticut AFL-CIO. I work with unions affiliated with the Connecticut AFL-CIO, as well as with the National AFL-CIO and its Political Department.
2. Part of my responsibilities, during the 1998 Democratic Primary election campaign for the First Congressional District in Connecticut, in which four candidates, including Miles Rapoport and John Larson, competed was to oversee the Connecticut AFL-CIO's efforts regarding that election. I also coordinated those efforts with the National AFL-CIO "Labor 98" effort.
3. The Connecticut AFL-CIO COPE convention took place in early August 1998 and voted to endorse Mr. Rapoport for the Democratic Primary, which was to occur on September 15. Thereafter, in coordination with the "Labor 98" program, the Connecticut AFL-CIO undertook to reach members of its affiliated unions to inform them about the issues in this primary election and to encourage them to vote for Mr. Rapoport.
4. I have read the complaint filed by Mr. Larson with the Federal Election Commission against Mr. Rapoport and Rapoport for the First. This complaint contains allegations about activities by the Connecticut AFL-CIO during the primary election campaign. None of these allegations has a basis in fact.

5. The leaflet Mr. Larson marked as "Exhibit A" was prepared by the National AFL-CIO on the basis of information about the candidates that we gathered, and the leaflet was provided to the Connecticut AFL-CIO for our use and distribution. I know of no coordination with Mr. Rapoport or his campaign with respect to the content or distribution of this document. The Connecticut AFL-CIO circulated the leaflet only to union members; specifically, it was mailed to members of some of the unions affiliated with the Connecticut AFL-CIO who reside in the First District. We also leafleted union members at several worksites in the district.

6. The leaflet Mr. Larson marked as "Exhibit B" was also prepared by the National AFL-CIO and provided to the Connecticut AFL-CIO for our use and distribution. The Connecticut AFL-CIO mailed this leaflet to approximately one-half of the union members residing in the First District who were registered Democrats. There was no distribution of this leaflet to anyone other than union members.

7. I know of no time that any employee of the Connecticut AFL-CIO or any person paid by the AFL-CIO "Labor 98" operation work out of Mr. Rapoport's headquarters or work otherwise under the direction of Mr. Rapoport's campaign. I am aware that union members volunteered for the Rapoport campaign, but none were in the employ, or acting under the direction or control, of the Connecticut AFL-CIO or the National AFL-CIO.

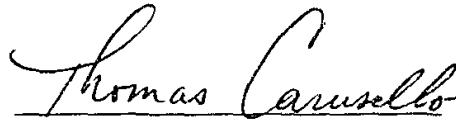
8. The Connecticut AFL-CIO did not pay for, and had no other involvement in, any personal financial contributions to Mr. Rapoport's campaign that may have been made by either officers of the Connecticut AFL-CIO or other union members.

9. I have been informed that the National AFL-CIO's federal political action committee, COPE, made a contribution to Mr. Rapoport's registered political committee in the amount of \$5,000 during the primary campaign. Neither the Connecticut AFL-CIO nor its political action committee, Connecticut COPE, made a contribution to Mr. Rapoport's committee at any time.

10. The Connecticut AFL-CIO's resources and facilities were used in connection with the Rapoport campaign only for internal union membership communications, namely, the mailings and leafleting I have described, as well as telephone appeals to union members.

11. At no time did the Connecticut AFL-CIO assert that any of the activities I have described or any of its other activities were "independent expenditures" with respect to the Rapoport campaign, inasmuch as the Connecticut AFL-CIO's activities in connection with this primary election were confined to communications with union members, rather than the general public.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 11, 1998.

  
Thomas Carusello

Dated: 11/11/98